

United States District Court, Northern District of Illinois


Name of Assigned Judge or Magistrate Judge	John F. Grady	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	01 CR 348 - 7	DATE	7/28/2004
CASE TITLE	USA vs. Bonnie LaGiglio		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

DOCKET ENTRY:

- (1) ☐ Filed motion of [use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due ____.
- (3) ☐ Answer brief to motion due _____. Reply to answer brief due ____.
- (4) ☐ Ruling/Hearing on _____ set for _____ at _____.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (7) ☐ Trial[set for/re-set for] on _____ at _____.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] ENTER MEMORANDUM OPINION AND ORDER: Defendant Bonnie LaGiglio's emergency motion for order for her release pending appeal is granted. The defendant Bonnie LaGiglio is ordered released pending appeal. The recognizance bond previously imposed by this court is reinstated.
- (11) ☒ [For further detail see order attached to the original minute order.]

<input type="checkbox"/> No notices required, advised in open court.	2004 JUL 28 PM 6:49 U.S. DISTRICT COURT CLERK	Be etnsm number of notices JUL 29 2004 date docketed docketing deputy initials 7/28/2004 date mailed notice AMM mailing deputy initials	Document Number
<input type="checkbox"/> No notices required.			703
<input checked="" type="checkbox"/> Notices mailed by judge's staff.			
<input type="checkbox"/> Notified counsel by telephone.			
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AMM 	courtroom deputy's initials	Date/time received in central Clerk's Office	

01-348,041-JCD

July 28, 2004

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOCKETED

JUL 28 2004

UNITED STATES OF AMERICA,

Plaintiff,

v.

BONNIE LAGIGLIO,

Defendant.

$$\begin{array}{l}) \\) \\) \\) \\) \\) \\) \\) \end{array}$$

No. 01 CR 348-7

MEMORANDUM OPINION AND ORDER

Before the court is the emergency motion of defendant Bonnie LaGiglio seeking an order for her release pending appeal. The Court of Appeals has remanded the case to this court for the limited purpose of reconsidering our decision on defendant's release pending appeal in light of United States v. Booker, No. 03-4225, 2004 WL 1535858 (7th Cir. July 9, 2004).

The statute governing bail pending appeal provides that a convicted person must be detained unless the district court finds that she is not a flight risk or a danger to the community and that her appeal "is not for the purpose of delay and raises a substantial question of law or fact likely to result in reversal [or] an order for a new trial." 18 U.S.C. § 3143(b)(1). "A court considering bail pending appeal must first determine whether the question raised by the appeal is 'substantial,' and then must

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determine whether a[n] appellate ruling is likely to require reversal of the conviction or a new trial." U.S. v. Shoffner, 791 F.2d 586, 588 (7th Cir. 1986). A "substantial" question of law or fact has been defined as one that presents a close question or "one that very well could be decided the other way." Id. at 589.

One of the questions now presented or soon to be presented in LaGiglio's appeal deals with the effect of the Supreme Court's ruling in Blakely v. Washington, 124 S. Ct. 2531 (2004), and the Seventh Circuit's subsequent ruling in Booker, 2004 WL 1535858. In Booker, the Seventh Circuit held that in light of Blakely, the application of guidelines sentencing enhancements that require factual findings by the sentencing judge violates the Sixth Amendment.

LaGiglio was convicted of conspiracy to impede the collection of taxes in violation of 18 U.S.C. § 371. Her sentence was enhanced pursuant to findings regarding the amount of tax loss and that the offense involved sophisticated means. Thus, it does appear that in light of Booker, LaGiglio raises a substantial question that is likely to require reversal, at least for the purpose of resentencing. We also find that the appeal is not for the purpose of delay and that LaGiglio is not a flight risk or a danger to the community.

Our disposition of LaGiglio's motion should not be taken as an indication of any view this court is likely to take regarding an

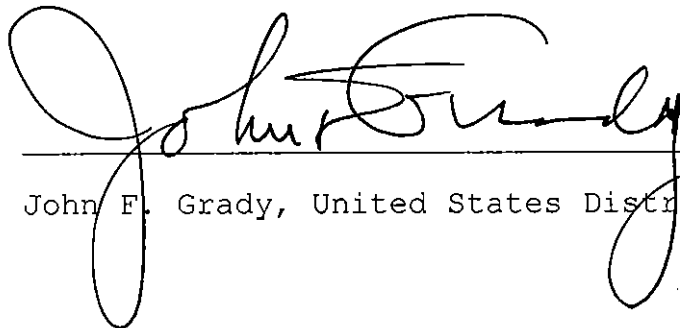
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appropriate new sentence should there be a reversal and remand for resentencing. In the event of a holding that the substantive portions of the guidelines are not severable from the requirement that a judge find the facts relevant to a sentence, we intend to adopt the following procedure suggested in Booker: "the judge . . . can choose any sentence [within the statutory range] and in making [this] determination he is free to draw on the guidelines for recommendations as he sees fit." 2004 WL 1535858, at *6.

For the reasons stated above, the defendant Bonnie LaGiglio is ordered released pending appeal. The recognizance bond previously imposed by this court is reinstated.

DATE: July 28, 2004

ENTER:



John F. Grady, United States District Judge